

## REMARKS

Applicant sincerely appreciates the thorough examination of the present application as evidenced by the Office Action of March 13, 2003. Applicant appreciates the Examiner's indication of allowable subject matter in Claims 16-18. However, these claims have not been placed in independent form as Applicant submits that all the claims are patentable over the cited references for at least the reasons discussed below. Accordingly, Applicant respectfully submits that this case is now in form for allowance.

### **The Section 103 Rejections:**

Claims 1-4, 6-11 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 4,723,209 to Gittle ("Gittle") in view of GB 599,354 to Tribe ("Tribe"). Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Gittle and Tribe and further in view of United States Patent No. 5,631,993 to Cloud et al. ("Cloud"). Claims 12-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gittle and Tribe and further in view of United States Patent No. 2,643,150 to Giles ("Giles"). Claim 20 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Gittle and Tribe and further in view of United States Patent No. 6,007,120 to Vogt et al. ("Vogt"). Applicant submits that the claims are not obvious for at least the reasons discussed below.

To establish a prima facie case of obviousness, the prior art reference or references when combined must not only teach or suggest *all* the recitations of the claim, there must also be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. M.P.E.P. § 2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. § 2143.01, citing *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). To support combining references, evidence of a suggestion, teaching, or motivation to combine must be **clear and particular**, and this requirement for clear and particular evidence is not met by broad and conclusory statements about the teachings of references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir.

1999). The Court of Appeals for the Federal Circuit has further stated that, to support combining or modifying references, there must be **particular** evidence from the prior art as to the reason the skilled artisan, with no knowledge of the claimed invention, **would have selected these components for combination in the manner claimed.** *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

Respectfully, the Office Action fails to meet the requirements for a showing of obviousness under § 103. Applicant submits that the references cannot properly be combined in the manner relied on in the Office Action. In particular, in rejecting independent Claim 1, the Office Action acknowledges that Gittle does not disclose or suggest use of a "toggle clamp mechanism." (Office Action, p. 2). The Office Action asserts that Tribe discloses "a toggle clamp mechanism" and that it would have been obvious "to substitute Gitter's [sic] clamps with Tribe's clamps to provide a clamp mechanism than [sic] can be operated easily by hand without using any tools." (Office Action, pp. 2-3). Applicant respectfully disagrees based on contrary statements in Tribe itself.

Tribe is directed to "clips or pins for securing together **temporarily**, metal sheets or panels which are **subsequently to be joined together by welding or riveting.**" (Tribe, p. 1, lines 8-12)(emphasis added). After welding, "operations are completed, the pin may be removed simply by swinging the lever and withdrawing the pin." (Tribe, p. 2, lines 115-119). Thus, the panel securing pin of Tribe is described as merely for temporary use to facilitate operations for attaching "metal sheets or panels." In contrast, Gittle describes an enclosure in which a partition member 43 includes threaded studs 55 extending therefrom that "can be used to fasten the housing parts 33 and 34 to opposite sides independently of each other" by nuts 58. (Gittle, Col. 4, line 63 to Col. 5, line 3, Col. 5, lines 38-39, Figure 10). There is no other or subsequent joining operation and the attachment, while re-enterable, is not temporary. Furthermore, given the role of the partition member in Gittle, it is questionable whether the partition member would be properly held in place if the studs 55 and nuts 58 were replaced by the clamp of Tribe. In addition, it is doubtful that the clamp of Tribe could be scaled down to a size that could even be used in the context of the case of Gittle. Applicant submits that the combination of Gittle and Tribe relied on for the rejections is

clearly not based on the required clear and particular evidence from the prior art to combine the references in the manner relied on in the Office Action. Accordingly, the rejections of Claim 1 and the claims that depend therefrom should be withdrawn for at least these reasons.

The dependent claims are patentable at least based on their dependence on independent Claim 1 as discussed above. Furthermore, various of the dependent claims are separately patentable. For example, the Office Action rejects Claim 10 by asserting that Tribe teaches "a face extending generally transversely of the operating tab ... and serving as a release member." (Office Action, p. 4). Applicant submits that the transversely extending face of Claim 10 is not disclosed or suggested by Tribe. For example, the embodiments of Figure 3 of the present application illustrate a tab or lever 38 and a face 40 extending transversely of the tab or lever 38. (Specification, Figure 3, p. 11, lines 30-32). The Office Action fails to explain how any such arrangement is disclosed by Tribe and Applicant can find no such disclosure or suggestion in Tribe. Accordingly, the rejection of Claim 10 should also be withdrawn for at least these additional reasons.

Claims 12-15 are rejected based on Gittle, Tribe and Giles, where Giles is relied on as disclosing the "means to resist release" of Claim 12. (Office Action, p. 6). However, Giles is directed to a clamping ring closure using a latch or clip 6, not a toggle clamp mechanism as asserted in the Office Action. (Giles, Col. 2, line 11). There is no basis for combining the features of the latch of the ring closure of Giles with either Tribe or Gittle. For example, unlike the latch of Giles, a toggle member typically has some self latching effect and, thus, as with the securing pin of Tribe, one of skill in the art may not be motivated to provide an additional "means to resist release." Accordingly, the rejection of Claims 12-15 should also be withdrawn for at least these additional reasons.

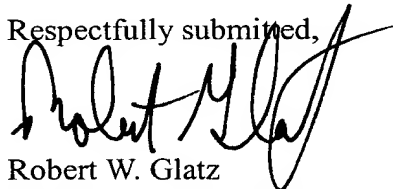
With respect to Claim 19, Applicant is unable to determine how Figures 1 and 2 of Tribe, as relied on by the Office Action, discloses "means (part of 11) for engagement by a tool." (Office Action, p. 5). If this rejection is maintained, Applicant requests a clearer statement of what "part" of the body 11 of Tribe is relied on for the rejection as no such means for engagement by a tool appears to be mentioned in Tribe.

New Claims 21-27 are patentable at least based on their dependence from Claim 1. Furthermore, dependent Claims 21-27 are separately patentable based on the recitations of those claims. For example, Claims 21 and 22 recite, respectively, that the first part of the toggle clamp mechanism is rectilinear and flat as contrasted with the cylindrical pin of Tribe. Claim 23 recites a an elongate rod having a T-shaped end such as illustrated in the embodiments of Figure 6 of the present application. Claim 24 recites particular aspects of the toggle mechanism that may facilitate closure of the toggle mechanism as described in the present specification at page12, lines 10-17, which aspects are clearly not disclosed or suggested by Tribe. Claim 25 includes recitations related to the positioning of the clamp relative to the closure members. Claim 26 includes recitations related to embodiments such as described at page 14, lines1-5 of the present application including a toggle clamp mechanism on the cable entry port end of the closure "where a conventional toggle clamp would not be usable." Finally, Claim 27 recites embodiments where the toggle clamp mechanism contacts the resilient element as illustrated, for example, in Figure 12 of the present application. Accordingly, Claims 21-27 are also separately patentable for at least these reasons.

### **Conclusion**

Applicant respectfully submits that, for the reasons discussed above, the references cited in the present rejections do not disclose or suggest the present invention as claimed. Accordingly, Applicant respectfully requests allowance of all the pending claims and passing this application to issue.

Respectfully submitted,



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In re: Radelet  
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